IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 460 OF 2003

M/s. Bajaj Data Processing Pvt.Ltd.
& aNR. ..Petitioners

Versus

M/s. Tata Infotech Limited ..Respondent

Mr. M.S.Doctor with Mr. Jariwala i/b.
Thakore Jariwala & Associates for Petitioners.
Mr. Gaurav Joshi i/b. Mr.D.T.Lulia for Respondent.

CORAM: D.K.DESHMUKH,J.

DATE : 12th April,2005.

P.C.

1. The Petitioners by this Petition challenge the awards dated 18.11.2002 and 14.5.2003. The first award decides the objection raised by the petitioner No.1 to the jurisdiction of the learned arbitrator and the second award decides the claim on merits. So far as the aspect of the jurisdiction is concerned, an

objection was raised to the jurisdiction of the learned arbitrator on the ground that the agreement which contained the arbitration clause was merely a draft agreement and not final agreement. The second objection was that the stamp paper on which the agreement is written was by the date on which the agreement was signed by the parties, incapable of being used as stamp paper because period of six months had expired. Both the objections have been considered in detail by the learned arbitrator and he has given cogent reasons for rejecting both the objections. The learned arbitrator has found that each page of the agreement is signed on behalf of the petitioners and, therefore, he has recorded a finding of fact that the agreement cannot be termed as a draft agreement. The learned arbitrator has also found that the date of signing of the agreement was 23.6.1997, whereas the stamp paper was dated 21.4.1997. That the date of the agreement would be 23.6.1997 is a finding of fact. The learned arbitrator has also given cogent reasons for holding that 18.10.2000 which is the date mentioned below the signature is not the date of signing of the agreement.

2. After hearing learned Counsel on both sides at length, I find no reason to say that the findings of fact recorded by the learned arbitrator are perverse.

In the limited jurisdiction of this Court under Section 34 of the Arbitration & Conciliation Act, 1996, the finding of fact recorded by the arbitrator cannot be disturbed specially when there is material available on record on which the findings of fact are based.

3. So far as the merits of the matter are concerned, the learned arbitrator has observed that the statement of claims and all the documents were served on the petitioners in the month of May 2003 but they did not file their reply to the statement of claim. While rejecting the preliminary objection by order dated 18.11.2002, the arbitrator directed the petitioner to file written statement, but they did not file their written statement and therefore, the learned arbitrator proceeded to make the award, in the absence of denial of the allegations made in the statement of claim and in the absence of any dispute raised about the documents on which reliance is placed by the claimant accepting the statements in the statement of claim and the documents filed by the respondent at face value. In my opinion, no fault can be found with the course of action adopted by the learned Arbitrator.

4. The submission of the learned Counsel appearing

for the petitioners is that by of the order dated 18.11.2002, the petitioners were directed to file their reply. They should have been given more time to file their reply. In my opinion, the submission is not well-founded. Perusal of the provisions of Section 16 of Arbitration & Conciliation Act, 1996 shows that the scheme of the Act is that if a party desires to raise objection with regard to the jurisdiction of the arbitral Tribunal, then apart from raising the preliminary objection, the party has also to file his reply on merits. Because sub-section (5) of Section 16 clearly contemplates that in case the objection to the jurisdiction of the arbitral tribunal is rejected, then the arbitral tribunal has to continue arbitral proceedings and make the award. I do not find any justification given by the petitioner as to why reply was not filed, though all the papers were served admittedly on the petitioners in the month of May 2002. The remedy of the arbitral proceedings is provided by law to the parties for speedy resolutiion of the disputes between the parties. If a party expects the Arbitrator to give indefinite time to file their reply, in my opinion, it will not be appropriate. I do not find any fault in the conduct of the arbitrator in not granting any more time to the petitioners to file their reply.

5. When I heard the matter last, I put it to the learned Advocate appearing for the petitioners that if the petitioners are willing to deposit the awarded amount in Court, then the question of referring the matter again back to the arbitrator could be considered so that the petitioners can be given an opportunity of being heard. The learned Advocate appearing for the petitioners, after taking instructions, stated that the petitioners are unwilling to deposit the amount. Taking an overall view of the matter, therefore, in my opinion, the sole object of filing this Petition appears to be to delay the execution of the award.

6. The learned Advocate appearing for both the parties are agreed that the arbitrator was not justified in making the award against the petitioner No.2. In this view of the matter, herefore, the award against the Petitioner No.2 is set aside. However, the award made by the learned arbitrator against the petitioner No.1 is confirmed. The Petition to that extent is dismissed. Petitioner No.1 is directed to pay costs of the Respondent as incurred.

(D.K.DESHMUKH,J.)